

SAMCOM 48 (DE) LLC v Ke Huang Shi
2022 NY Slip Op 33760(U)
November 4, 2022
Supreme Court, New York County
Docket Number: Index No. 152513/2022
Judge: Joel M. Cohen
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

-----X

SAMCOM 48 (DE) LLC, 37-10 114TH STREET ML
FUNDING, LLC,

Plaintiffs,

- v -

KE HUANG SHI, CHATUS MEZZ (DE) LLC, WING FUNG
CHAU, AIYUN CHEN

Defendants.

INDEX NO. 152513/2022

MOTION DATE 09/22/2022,
09/09/2022

MOTION SEQ. NO. 001 002

**DECISION + ORDER ON
MOTION**

-----X

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 25, 40

were read on this motion to DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 41

were read on this motion for DEFAULT JUDGMENT.

This is an action relating to property located at 37-10 114th Street in Corona, New York (the "Property"), which is currently a Holiday Inn near LaGuardia International Airport ("LGA"). Plaintiffs SAMCOM 48 (DE) LLC ("SAMCOM") and 37-10 114th Street ML Funding LLC ("ML Funding") (collectively, "Plaintiffs") allege that Defendant Ke Huang Shi ("Shi") filed a fraudulent Declaration of Restriction against the Property, thus clouding the title making it impossible to sell the Property or to refinance the existing loan on the Property. Plaintiffs also allege that Defendants Chatus Mezz LLC ("Chatus LLC"), Wing Fung Chau ("Chau"), and Aiyun Chen ("Chen") (collectively, "Chatus Defendants") aided and abetted Shi by facilitating Shi's tortious conduct.

In Motion Sequence 002, Plaintiffs move for a default judgment against non-appearing Defendant Shi on the first, second, and fourth causes of action pursuant to CPLR § 3215.

In Motion Sequence 001, the Chatus Defendants move to dismiss Plaintiffs' Complaint alleged against them for aiding and abetting slander of title and tortious interference (the third, fifth, eighth, and ninth causes of action) pursuant to CPLR 3211(a)(7) for failure to state a claim.

After oral argument, Plaintiffs advised the Court that Plaintiffs would "discontinue the remaining causes of action alleged against [the Chatus Defendants]" if a default judgment is entered against Defendant Shi, "thus disposing of the action" (NYSCEF 41).

DISCUSSION

Plaintiffs' motion for a default judgment against Defendant Shi is granted in part. Plaintiffs have submitted unrebutted evidence demonstrating compliance with the requirements of CPLR 3215 (NYSCEF 28–33). Plaintiffs also submitted proof that Shi was served with a copy of this motion and the papers upon which relief is sought (NYSCEF 34–36, 38). No opposition has been filed and it is undisputed that Shi has failed to timely appear, answer, or otherwise move with respect to the Complaint.¹

However, default judgment is only granted on Plaintiffs' first cause of action pursuant to RPAPL 1501(1). Plaintiffs fail to allege actual damages on their claims for slander of title and

¹ Prior to and during oral argument, the Court raised the question whether venue is appropriate in New York County, given that the matter affects title to real property in Queens County (*see* CPLR 507). After oral argument, Plaintiffs submitted a letter citing authority for maintaining venue in New York County as well as for the proposition that "the court ha[s] no authority to *sua sponte* change venue" (*Travelers Indem. Co. of Illinois v Nnamani*, 286 AD2d 769, 770 [2d Dept 2001]). The Court is persuaded by the latter point. CPLR 509 provides that "[n]otwithstanding any provision of this article, the place of trial of an action shall be in the county designated by the plaintiff, unless the place of trial is changed to another county by order upon motion, or by consent as provided in subdivision (b) of rule 511." Here, no party has moved to change venue.

tortious interference, and therefore a default judgment on those claims is not warranted (*Mazel 315 W. 35th LLC v 315 W 35th Assoc. LLC*, 2013 WL 1178640 [Sup Ct, NY County 2013] [denying motion for default judgment on slander of title claim where plaintiff failed to allege special damages]; *Page Pub., Inc. v Susn Story*, 2020 WL 6041384 [Sup Ct, NY County 2020] [denying default judgment where plaintiff failed to sufficiently establish sufficient proof of the facts in its claims of tortious business interference]). Defendant Shi may seek a vacatur of the instant default judgment if he can satisfy the requirements of CPLR § 5015, CPLR § 317, or any other relevant law.

Given that the Court has not granted the default judgment in full, it is unclear whether Plaintiffs' proposal to discontinue their claims against the Chatus Defendants remains in place. The Court will hold its decision on Motion Sequence 001 in abeyance pending confirmation from the Plaintiffs.

Accordingly, it is

ORDERED that the motion for a default judgment against Defendant Shi (Mot. Seq. 002) is **granted** as to Plaintiffs' First Cause of Action, and otherwise **denied**; it is further

ADJUDGED AND DECLARED that SAMCOM 48 (DE) LLC is the owner in fee simple absolute to the Property, free and clear of the Declaration of Restriction filed by Defendant Shi, including the purported restraints on sales, transfers, conveyances, mortgages, and assignments set forth therein; it is further

ADJUDGED AND DECLARED that Defendant Shi is barred from claiming any estate or interest, or from claiming any restraint on SAMCOM's right to alienation, in the Property based on the Declaration of Restriction; it is further

ADJUDGED AND DECLARED that SAMCOM 48 (DE) LLC has exclusive possession of the Property unclouded by the Declaration of Restriction; it is further

ADJUDGED AND DECLARED the Declaration of Restriction is cancelled; and it is further

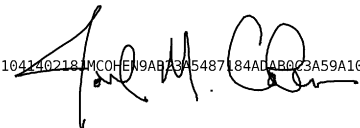
ORDERED that Plaintiff's counsel shall serve a copy of this order with notice of entry on Defendants within five (5) days from the date of this Order.

This constitutes the Decision and Order of the Court.

11/4/2022

DATE

202211041402184MCOHEN9AB7395487184ADAB073A59A10853C14



JOEL M. COHEN, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE